

| Plaintiff Name       | Date/Provider                 | Echocardiogram Report   | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|----------------------|-------------------------------|---|--|
| Beverly Fleming      | 10/27/01 - Dr. Razzak Tai     | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Brenda A. Green      | 04/8/02 - Dr. Gene Hutchenson | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Keith Paul Hachtel   | 04/22/01 - Dr. Razzak Tai     | Mitral valve has normal structure and function<br>No aortic regurgitation noted                       | No   |
| Lori Harris          | 06/25/01 - Dr. Razzak Tai     | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal                | No   |
| Estella King         | 04/21/01 - Dr. Razzak Tai     | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Avis Yvonne Lucas    | 06/25/01 - Dr. Razzak Tai     | Mitral valve has normal function<br>Aortic valvular function is normal                                | No   |
| Donna Malone         | 04/22/01 - Dr. Razzak Tai     | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Debbie Turney-Miller | 06/24/01 - Dr. Razzak Tai     | Mitral valve shows normal structure and function<br>Aortic valvular function is normal                | No   |
| Marie N. Mitchell    | 06/25/01 - Dr. Razzak Tai     | Mitral valve appears "thickened and has a diastolic gradient"<br>Aortic valvular function is normal   | No   |
| Stephanie Owens      | 06/25/01 - Dr. Razzak Tai     | Mitral valve shows normal structure and function<br>Aortic valvular function is normal                | No   |
| Lizette Purnell      | 06/24/01 - Dr. Razzak Tai     | Mild mitral regurgitation<br>Aortic valvular function is normal                                       | No   |
| William Peyton Smith | 06/25/01 - Dr. Razzak Tai     | Mitral valve shows normal structure and function<br>No aortic regurgitation noted                     | No   |
| Albert Taylor        | 06/25/01 - Dr. Razzak Tai     | No mitral regurgitation noted<br>Aortic valvular structure is normal                                  | No   |
| Phonecia S. Wilson   | 04/22/01 - Dr. Razzak Tai     | Mitral valve has normal structure and function<br>No aortic regurgitation noted                       | No   |

Chandler et al. v. Wyeth et al.

| Plaintiff Name          | Date/Provider             | Echocardiogram Report  | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|-------------------------|---------------------------|--|--|
| Helen Marie Glenn-Beady | 05/24/01 – Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valve is “slightly thickened” with normal function | No   |
| Tammy Cupp              | 06/24/01 – Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted                             | No   |

Mosley et al. v. Wyeth et al.

| Plaintiff Name    | Date/Provider             | Echocardiogram Report   | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|-------------------|---------------------------|---|--|
| Moroline H. Allen | 04/21/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function  | No   |
| Philip Cohen      | 06/24/01 - Dr. Razzak Tai | Mild valve shows normal structure and function<br>Aortic valvular structure is normal                 | No   |
| Christine Coleman | 10/27/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Crystal Franks    | 06/25/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>Aortic valvular function is normal                | No   |
| Debbie Girdley    | 04/22/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valvular function is normal                                       | No   |
| Sandra Harris     | 06/24/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular function is normal                | No   |
| Kim Henderson     | 06/25/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>Aortic valvular function is normal                | No   |
| Ruby Nell Howell  | 04/22/01 - Dr. Razzak Tai | “Trace” mitral regurgitation<br>Aortic valvular function is normal                                    | No   |
| Monica James      | 04/22/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Windia Jones      | 06/25/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valvular function is normal                                       | No   |
| Cyndi D. King     | 10/27/01 - Dr. Razzak Tai | “Minimal” mitral regurgitation<br>No aortic regurgitation noted                                       | No   |

| Plaintiff Name          | Date/Provider             | Echocardiogram Report   | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|-------------------------|---------------------------|---|--|
| Joseph Lee, Jr.         | 06/24/01 - Dr. Razzak Tai | No mitral regurgitation noted<br>Aortic valvular function is normal                                   | No   |
| Doris McSwine           | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal                | No   |
| Todd Eric Morgan        | 10/27/01 - Dr. Razzak Tai | "Minimal" mitral regurgitation<br>Aortic valvular structure and function appears to be normal         | No   |
| Dorothy Owens           | 06/25/01 - Dr. Razzak Tai | Mitral valve "appears to be normal"<br>Aortic valvular function is normal                             | No   |
| David L. Perry          | 06/25/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valvular function is normal                                       | No   |
| Charlotte S. Price      | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>No aortic regurgitation noted                     | No   |
| Carol Simmons           | 10/26/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>No aortic regurgitation noted                     | No   |
| Jerry L. Smith          | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular function is normal                | No   |
| Mary Stewart            | 04/22/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Quinta Tillman          | 10/28/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>"Minimal" aortic insufficiency   | No   |
| Earneстine White        | 06/24/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal                | No   |
| Francelia Rena Williams | 04/21/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal structure and function    | No   |

*Stallings et al v. Wyeth et al.*

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|----------------|---------------|-----------------------|--|
|                |               |                       |  |

| Plaintiff Name      | Date/Provider             | Echocardiogram Report  | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|---------------------|---------------------------|--|--|
| Stephanie Bailey    | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>No aortic regurgitation noted  | No   |
| Marilyn Blanch      | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular function is normal   | No   |
| Priscilla Burney    | 04/22/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal                            | No   |
| Mary C. Buchanan    | 06/25/01 - Dr. Razzak Tai | "Minimal" mitral regurgitation<br>Aortic valvular function is normal   | No   |
| Billy Cupp, Jr.     | 06/24/02 - Dr. Razzak Tai | Mitral valve shows no abnormality<br>Aortic valvular function is normal  | No   |
| Charlie M. Douglas  | 10/28/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>"Trace" aortic insufficiency  | No   |
| Richard D. Eifling  | 06/25/01 - Dr. Razzak Tai | Mitral valve appears to be normal<br>Aortic valvular function is normal  | No   |
| Thelma B. Gales     | 10/26/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation is noted  | No   |
| Lisa M. Gross       | 04/21/01 - Dr. Razzak Tai | Mitral valve shows "slight thickening" otherwise normal structure and function<br>Aortic valve has normal structure and function | No   |
| Tammy Henderson     | 06/24/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal   | No   |
| Norma Dempsey Hisaw | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal   | No   |
| Barbara J. Jenkins  | 06/24/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal   | No   |
| Jacalyn T. Jones    | 06/25/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valvular function is normal  | No   |

| Plaintiff Name         | Date/Provider             | Echocardiogram Report   | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|------------------------|---------------------------|---|--|
| Edward McArthur        | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal                | No   |
| Pearl M. McGee         | 06/24/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>No aortic regurgitation noted                     | No   |
| Melissa Milano         | 04/22/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal function                  | No   |
| Donna Gail Morgan      | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular function is normal                | No   |
| Catherine M. Shaffer   | 04/22/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Johnnie Smith          | 10/27/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Patricia Sterling      | 06/24/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>No aortic regurgitation noted                     | No   |
| Annie Stevenson        | 10/27/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Wanda J. Thompson      | 06/25/01 - Dr. Razzak Tai | Mitral valve appears normal<br>Aortic valvular function appears to be normal                          | No   |
| Mary Schaefer Timms    | 06/25/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal function                  | No   |
| Maxine Tally Whitecomb | 06/24/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal function                  | No   |
| Edsell Williford       | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>No aortic regurgitation noted                     | No   |
| Carol P. Wilson        | 10/28/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>"Trace" aortic regurgitation   | No   |
| Mae Wilson             | 10/27/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Tabitha M. Wroten      | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal                | No   |

*Sanders et al. v. Wyeth et al.*

| Plaintiff Name     | Date/Provider             | Echocardiogram Report   | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|--------------------|---------------------------|---|--|
| Cynthia D. Adams   | 10/26/01 – Dr. Razzak Tai | “Trace” mitral regurgitation<br>Aortic function is normal   | No   |
| Dee Andrews        | 04/21/01- Dr. Razzak Tai  | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Mary Alice Arnold  | 06/25/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>No aortic regurgitation noted                     | No   |
| Elenor J. Barbee   | 10/28/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Harry L. Beaver    | 06/25/01 - Dr. Razzak Tai | Mitral valve “appears to be normal except for thickening”<br>Aortic valvular function is normal       | No   |
| Sue Bolden         | 06/25/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>Aortic valvular function is normal                | No   |
| Mary Margo Brock   | 06/24/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>No aortic regurgitation noted                     | No   |
| Peggy Butler       | 06/25/01- Dr. Razzak Tai  | Mitral valve is “thickened” with normal function<br>Aortic valvular function is normal                | No   |
| Rebecca Lou Carter | 06/24/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>Aortic valvular function is normal                | No   |
| Betty J. Davis     | 06/25/01- Dr. Razzak Tai  | Mitral valve appears to be normal<br>Aortic valvular function appears to be normal                    | No   |
| Rhonda Saul Evans  | 06/25/01 - Dr. Razzak Tai | Mitral valve has normal structure and function<br>No aortic regurgitation noted                       | No   |
| Gween Fortune      | 10/28/01 - Dr. Razzak Tai | “Slight” mitral regurgitation<br>“Slight” aortic insufficiency  | No   |
| Jacqueline Frye    | 04/22/01- Dr. Razzak Tai  | Mitral valve shows normal structure and function<br>Aortic valvular structure and function are normal | No   |
| Patricia Harwell   | 10/02/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted  | No   |
| Traci Johnson      | 06/25/01 - Dr. Razzak Tai | Mitral valve is “thickened” with normal function<br>No aortic regurgitation noted                     | No   |

| Plaintiff Name     | Date/Provider             | Echocardiogram Report  | FDA Positive or Medically Eligible to Assert Downstream Opt-Out? |
|--------------------|---------------------------|--|--|
| Bobbie F. Love     | 04/21/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal structure and function | No   |
| Jo Ann Mathes      | 06/25/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>Aortic valvular function is normal                                    | No   |
| Mekii N. McGee     | 10/27/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted   | No   |
| John L. Pate       | 06/25/01 - Dr. Razzak Tai | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal             | No   |
| Nancy Rachal       | 06/24/01 – Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valvular function is normal             | No   |
| Laleta Lane Reeves | 06/25/01- Dr. Razzak Tai  | Mitral valve is "thickened" with normal function<br>Aortic valvular function is normal             | No   |
| Therial Taylor     | 06/24/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>"Minimal aortic stenosis and regurgitation"    | No   |
| Lorna Temple       | 10/28/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>"Trace" aortic insufficiency  | No   |
| LaSenya Thomas     | 06/25/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted   | No   |
| Kinley Wilson      | 04/21/01 - Dr. Razzak Tai | Mitral valve shows normal structure and function<br>Aortic valve has normal structure and function | No   |
| Marcia Woods       | 06/24/01 - Dr. Razzak Tai | Mild mitral regurgitation<br>No aortic regurgitation noted   | No   |

It is beyond comprehension that these plaintiffs could purport to exercise downstream Opt-Out rights when their own echocardiograms do not even arguably qualify them. Plaintiffs have had ample opportunity to address these problems but they have not. These individuals should never have filed suit because they do not meet the requirements to exercise downstream Opt-Out rights. The claims of these plaintiffs therefore must be dismissed.

**C. ALL NON-OPT-OUTS SHOULD BE DISMISSED AND ALL CLAIMS OF PPH SHOULD BE DISMISSED**

The seven Complaints in these cases include general allegations of primary pulmonary hypertension, as well as claims for punitive and exemplary damages that only valid Initial Opt-Outs or those who can meet the Settlement Agreement definition of Primary Pulmonary Hypertension (“PPH”) are entitled to make. *See, e.g.*, Complaints at ¶ 4.6(I). Not a single plaintiff in these seven cases has complied with PTO 2383 or has even attempted to demonstrate that he or she can meet the Settlement Agreement definition of PPH. Accordingly, all claims of PPH and related punitive and exemplary damages should be dismissed for all remaining plaintiffs in all of these cases. Additionally, all plaintiffs who have not opted-out at all should be dismissed from these cases.

The Complaints in all seven cases contain generalized allegations of PPH that are not specific as to each plaintiff. On March 4, 2003, counsel for Wyeth sent a letter in each of the seven cases requesting that plaintiffs provide all evidence upon which they intended to rely to support claims of PPH as defined in the Settlement Agreement –for any plaintiff who actually intended to claim PPH. *See* Ex. A. As the Court is well aware, PTO 2383 requires plaintiffs to provide all such evidence within 30 days of request by Wyeth. In contravention of PTO 2383, as well as common courtesy, counsel for plaintiffs simply ignored these letters, as well as all subsequent overtures to address the procedural deficiencies in their cases. As a consequence of their failure to comply with PTO 2383, for all plaintiffs in all seven cases, all allegations of PPH and related punitive or exemplary damages should be stricken, and their cases should be dismissed.

Additionally, the claims of the following non-opt out plaintiffs should be dismissed because they have failed to demonstrate that they have a right, pursuant to PTO 2383, to sue for PPH as defined by the Settlement Agreement. In the absence of a valid PPH claim and any opt-out, therefore, all claims these plaintiffs might have are settled claims and may not be pursued.

| CASE             | PLAINTIFF <sup>10</sup> | Opt-Out Status         |
|------------------|-------------------------|------------------------|
| <i>Binion</i>    | Sheila Bush             | No Opt-Out forms filed |
| <i>Binion</i>    | Elaine Steward          | No Opt-Out forms filed |
| <i>Mosley</i>    | Diane Thompson          | No Opt-Out forms filed |
| <i>Sanders</i>   | Hannah McClure          | No Opt-Out forms filed |
| <i>Sanders</i>   | Ruxandra Olariv         | No Opt-Out forms filed |
| <i>Sanders</i>   | Deloris Sample          | No Opt-Out forms filed |
| <i>Sanders</i>   | Velda Yvetta Smith      | No Opt-Out forms filed |
| <i>Stallings</i> | Stephanie Bailey        | No Opt-Out forms filed |
| <i>Stallings</i> | Sharon Ballinger        | No Opt-Out forms filed |
| <i>Stallings</i> | Linda Rogers Harwell    | No Opt-Out forms filed |
| <i>Stallings</i> | Nathaniel Williams      | No Opt-Out forms filed |

Even if the Court declines to dismiss all allegations of PPH for all plaintiffs at this time, there is a subset of plaintiffs who have already unequivocally demonstrated their inability to bring a PPH claim pursuant to PTO 1415. Although plaintiffs have failed to respond to Wyeth's requests for evidence of PPH, some plaintiffs have provided echocardiogram reports in the course of discovery. The plaintiffs in the following chart should be dismissed under PTO 1415 because, although their echocardiograms on their face indicate elevated pulmonary artery systolic pressures as required by Part 1(b) of the PPH definition, they also indicate that these plaintiffs have at least moderate mitral regurgitation or moderate aortic insufficiency, which disqualifies a PPH claim under part 2(a) of the PPH definition. PTO 1415.

| CASE            | PLAINTIFF              | PART 2(a) <sup>11</sup> |
|-----------------|------------------------|-------------------------|
| <i>Robbins</i>  | Kevin Minor            | moderate MR             |
| <i>Binion</i>   | Mitzi M. Allen         | moderate MR             |
| <i>Binion</i>   | Barbara Henry          | moderate MR             |
| <i>Chandler</i> | Michael C. Amburn      | moderate MR             |
| <i>Chandler</i> | Melissa Kennedy        | moderate MR             |
| <i>Chandler</i> | Lora A. Poe            | moderate MR             |
| <i>Chandler</i> | Elaine B. Turner       | moderate MR             |
| <i>Chandler</i> | Leslie White           | moderate MR             |
| <i>Mosley</i>   | Rhonda Prisock         | moderate MR             |
| <i>Mosley</i>   | Beverly Toliver        | moderate AI             |
| <i>Sanders</i>  | Sharon D. Holland-Sims | moderate MR             |
| <i>Sanders</i>  | Hannah McClure         | moderate MR,<br>mild AI |
| <i>Sanders</i>  | Dorothy J. Washington  | moderate MR             |

To be clear, there is no indication that any plaintiff in any of these seven cases is actually claiming PPH. Almost all of the plaintiffs have filed some type of opt-out form. However, a few straggling plaintiffs have filed no type of opt-out form at all, as indicated above, and the Complaints contain allegations of PPH and assert claims for punitive damages. Therefore, to address the slight chance that one or more of these plaintiffs actually means to assert himself or herself as a PPH claimant, and in the absence of any communication from plaintiffs' counsel as to their intent, Wyeth is constrained to move for the dismissal of all PPH claims and all non-opt-out plaintiffs.

**III. THE COURT SHOULD DIRECT PLAINTIFFS TO FILE AMENDED COMPLAINTS THAT ASSERT CLAIMS FOR ONLY THOSE INJURIES AND DAMAGES PERMITTED BY THE SETTLEMENT AGREEMENT**

As to the remaining plaintiffs whose echocardiogram reports purport to show FDA-Positive regurgitation (all of whom are downstream Opt-Outs), Wyeth respectfully

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Footnote continued from previous page

<sup>10</sup> These names are non-opt-outs. See Affidavit of Scott K. Monroe, attached as Exhibit L.

requests that this Court direct those plaintiffs to file Amended Complaints that assert claims for only those injuries and damages permitted by the Settlement Agreement. As discussed above, all of the Complaints assert claims for injuries not permissible for downstream Opt-Outs. Accordingly, Wyeth requests that the Court enter an injunction directing that each plaintiff with an echocardiogram report purportedly showing an FDA-Positive condition file an Amended Complaint that (i) alleges in detail the specific injury on which that person bases his or her claim as a downstream Opt-Out, and (ii) limits the claims asserted to that injury. No such injury should be permitted to form the basis for a claim unless it falls within the scope of permissible claims for downstream Opt-Outs under the Settlement Agreement.

Additionally, the joinder of Initial Opt-Outs with purported downstream Opt-Outs frustrates the purposes of the Settlement Agreement and is in direct violation of this Court's Order. *See* PTO 2627. Such joinder, this Court found, would "greatly prejudice Wyeth and would surely eviscerate the evidentiary and damage limitations for which Wyeth bargained in the Settlement Agreement." *Id.* Here, the lead plaintiff in six of these cases has exercised an Initial Opt Out. *See* Declaration of Scott K. Monroe, Exhibit L. Those plaintiffs are therefore not Class Members and are not subject to any of the restrictions on the prosecution of claims that bind the other plaintiffs joined in the same Complaint. Accordingly,

- While the downstream Opt-Out plaintiffs are precluded from seeking punitive damages, their co-plaintiff Initial Opt-Outs are not.

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Footnote continued from previous page

<sup>11</sup> Copies of the echo reports of these plaintiffs, as provided to Wyeth by plaintiffs, are attached hereto as Exhibit M.

- While the downstream Opt-Out plaintiffs are restricted to asserting claims based only on specified injuries, their co-plaintiff Initial Opt-Outs are not.
- According to the Settlement Agreement, while the downstream Opt-Outs are precluded from using previous factual findings, verdicts or judgments, their co-plaintiff Initial Opt-Outs are not. *See Settlement Agreement § IV(D)(4)(c).*
- According to the Settlement Agreement, while the downstream Opt-Outs plaintiffs are prohibited from introducing into evidence the terms of the Settlement Agreement or related proceedings, *id.*, at VIII(F)(3), their co-plaintiff Initial Opt-Outs are not.

Plaintiffs' strategy of bundling some Initial Opt-Out plaintiffs together with purported downstream Opt-Out plaintiffs is counter to this Court's rulings, and frustrates the restrictions applicable to downstream Opt-Out claimants. As noted by the Court, Wyeth would be deprived of the benefit of its bargain if such claims could be tried together in such a manner that the unrestricted Initial Opt-Outs claims could infect the evidence admissible and information presented to the jury in connection with the trial of the downstream Opt-Out claims. Wyeth therefore requests that the claims of the Initial Opt-Outs and the downstream Opt-Out plaintiffs be severed.

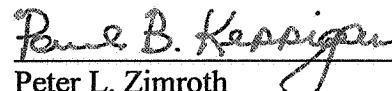
Finally, Wyeth notes that the vast majority of plaintiffs in these cases have not complied with this Court's Order in PTO 2930, requiring that each plaintiff provide Wyeth with Plaintiff Fact Sheets, List of Medical Providers, and Medical Authorization forms. In PTO 2930, this Court ordered that each plaintiff in any lawsuit removed to a United States District Court on or before July 31, 2003, deliver to all defendants a completed or updated list of Medical Providers and ten (10) executed Medical Authorizations by September 6, 2003. *See PTO 2930, at ¶ 7.* Plaintiffs have thus far failed on a grand scale to comply with this Court's Order. As a result, Wyeth is unable to meaningfully litigate these cases without such material. Plaintiffs should be ordered to comply with the provisions of PTO 2930.

#### IV. CONCLUSION

For all of these reasons and those set forth above, Wyeth therefore respectfully requests that the Court enter the following orders: (a) an Order directing plaintiffs Beverly Fleming (*Binion*); Velma Bell (*Harmon*) Arma Harper (*Mosley*) Valenta Allen-Williams (*Mosley*), Edward McArthur (*Stallings*), Robert Fulton McDaniel (*Binion*), Anthony Earl Sykes (*Binion*) Lillian Chandler (*Chandler*), Felicia Edwards (*Harmon*), Donna Murphy (*Harmon*), and Johnny Earl Clark (*Stallings*) to dismiss their claims with prejudice because they have otherwise settled with Wyeth or elected the AIO; (b) an Order directing the Class Members in Section II(B) of this Memorandum who are not medically eligible to bring downstream opt-out claims to dismiss their claims against Wyeth with prejudice for failure to meet the medical eligibility requirements for prosecuting a downstream Opt-Out of the Settlement Agreement; and (c) an Order directing the non-opt out plaintiffs listed in Section II(C) of this Memorandum to dismiss their claims with prejudice for failure to meet the medical eligibility requirements for prosecuting a PPH claim; (d) an Order directing those plaintiffs listed in Section II(C) of this Memorandum to dismiss their PPH claims with prejudice because they have not complied with PTO 2383 and they do not meet the Settlement Agreement definition of PPH, consistent with the findings of PTO 1415; (e) an Order directing that within 30 days all downstream Opt-Outs whose echocardiogram report shows purported FDA-Positive regurgitation file an Amended Complaint specifying the injury claimed and limiting their claims and damages to that injury; (f) an Order directing that within 30 days plaintiffs comply with the provisions of PTO 2627 and sever the Initial Opt-Outs from the downstream Opt Outs; and (g) an Order directing plaintiffs to comply with PTO 2930 and

within 30 days deliver to Wyeth plaintiff fact sheets and a List of Medical Providers with executed Medical Authorizations for each remaining plaintiff in these cases.

Respectfully submitted,



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Attorneys for Defendant Wyeth

Dated: October 24, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Wyeth's Motion to Dismiss Certain Plaintiffs in the *Linda Harmon, Duwanda Robbins, Janice Binion, Lillian Chandler, Patricia Mosley, Mary F. Sanders and Brenda Stallings* actions, supporting Memorandum of Law and Appendix of Exhibits was served this 24<sup>th</sup> day of October 2003 by UPS Overnight Delivery upon plaintiffs' counsel in each of the foregoing actions addressed as follows:

H. Gray Laird, Esquire  
Page, Kruger & Holland, P.A.  
10 Canebrake Boulevard, Suite 200  
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and by hand delivery upon the Special Discovery Master and the MDL 1203 Liaison Counsel identified below addressed as follows:

Gregory P. Miller, Esquire  
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and by U.S. first-class mail, postage prepaid, upon all other counsel required to be served by  
Pretrial Order No. 19.

  
Paul B. Kerrigan  
Paul B. Kerrigan

Date: October 24, 2003